

the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of

technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

#### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

#### § 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Dade (Docket No. FEMA-6940).	Unincorporated areas .....	Nov. 17, 1988 and Nov. 24, 1988. <i>Miami Herald</i> .	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 NW. 1st Street, Suite 2910, Miami, Florida 33128-1971.	Sept. 19, 1988 ..	125098
Florida: Manatee (Docket No. FEMA-6947).	Unincorporated areas .....	Dec. 9, 1988 and Dec. 16, 1988. <i>The Bradenton Herald</i> .	The Honorable Kent G. Chetlain, Chairman, Board of County Commissioners, Manatee County, P.O. Box 1000, Bradenton, Florida 33506.	Nov. 29, 1988 ...	120153
Illinois: Cook (Docket No. FEMA-6931).	Village of Westchester .....	July 21, 1988 and July 28, 1988. <i>Westchester News</i> .	The Honorable John J. Sinde, Village President, Village of Westchester, 10240 Roosevelt Road, Westchester, Illinois 60153.	Oct. 28, 1988 .....	170170
Tennessee: Shelby (Docket No. FEMA-6947).	City of Germantown .....	Dec. 22, 1988 and Dec. 29, 1988. <i>Germantown News</i> .	The Honorable Warner Hodges III, Mayor, City of Germantown, 1930 South Germantown Road, P.O. Box 38809, Germantown, Tennessee 38183-0809.	Dec. 12, 1988 ...	470053

Harold T. Duryee,  
Administrator, Federal Insurance  
Administration.

Issued: May 22, 1989.

[FR Doc. 89-12731 Filed 5-26-89; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 107

[Docket No. HM-138B; Amdt. No. 107-19]

#### Settlements and Compromises of Civil Penalty and Compliance Order Cases

**AGENCY:** Research and Special Programs  
Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** RSPA is amending its procedural rules for civil penalty and compliance order cases under the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, to facilitate expeditious compromises and settlements of such enforcement cases. Under this rule, parties may

compromise or settle any of those enforcement cases without the approval of an administrative law judge (ALJ) even when the case is pending before an ALJ.

**EFFECTIVE DATE:** These regulations are effective May 30, 1989. The good cause for making them effective immediately is that doing so will enable parties to expeditiously compromise or settle pending enforcement cases without detrimentally affecting the rights of any party.

**FOR FURTHER INFORMATION CONTACT:** George W. Tenley, Jr., Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590, (202) 366-4400.

**SUPPLEMENTARY INFORMATION:** Questions have been raised concerning the role, if any, of the administrative law judge (ALJ) in the compromise or settlement of HMTA civil penalty or compliance order enforcement cases pending before an ALJ. The procedural rules for those cases are being amended to specifically provide that the Chief Counsel of the Research and Special Programs Administration (RSPA) and a respondent in such a case may

compromise or settle the case, under 49 CFR 107.327, without order of the ALJ. In addition, this amendment specifically authorizes the voluntary dismissal of a case by the Chief Counsel of RSPA and the respondent without order of the ALJ pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure (FRCP). Section 107.321 makes the FRCP generally applicable in these cases. In the event of such a compromise, settlement or voluntary dismissal of a case pending before an ALJ, the Chief Counsel expeditiously will notify the ALJ before whom the case is pending of such compromise, settlement or voluntary dismissal. Finally, this amendment specifically authorizes a respondent to withdraw, in writing, a request for a formal administrative hearing. Such a withdrawal constitutes an irrevocable waiver of respondent's right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

These changes are intended to expedite and facilitate compromise and settlement of HMTA enforcement cases by specifically authorizing the parties to those cases to compromise or settle

them without involvement of, or approval by, an ALJ. Because these amendments are procedural in nature, no prior notice of proposed rulemaking (NPRM) is required under 5 U.S.C. 553.

#### Administrative Notices

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A final regulatory evaluation was not prepared as these amendments are not substantive changes. I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612.

#### List of Subjects in 49 CFR Part 107

Administrative practice and procedure.

In consideration of the foregoing, 49 CFR Part 107 is amended as follows:

#### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53; Pub. L. 89-670 (49 App. U.S.C. 1653(d), 1655).

2. In § 107.319, the last sentence in paragraph (c) is revised and a new paragraph (d) is added to read as follows:

#### § 107.319 Request for a hearing.

(c) \* \* \* Upon assignment of an ALJ, further matters in the proceeding generally are conducted by and through the ALJ, except that the Chief Counsel and respondent may compromise or settle the case under § 107.327 of this subpart without order of the ALJ or voluntarily dismiss the case under Rule 41(a)(1) of the Federal Rules of Civil Procedure without order of the ALJ; in

the event of such a compromise, settlement or dismissal, the Chief Counsel expeditiously will notify the ALJ thereof.

(d) At any time after requesting a formal administrative hearing but prior to the issuance of a decision and final order by the ALJ, the respondent may withdraw such request in writing, thereby terminating the jurisdiction of the ALJ in the case. Such a withdrawal constitutes an irrevocable waiver of respondent's right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

Issued in Washington, D.C. on May 24, 1989, under authority delegated in 49 CFR Part 1.

Travis P. Dungan,  
Administrator, Research and Special  
Programs Administration.

[FR Doc. 89-12797 Filed 5-26-89; 8:45 am]  
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#### National Highway Traffic Safety Administration

##### 49 CFR Part 531

[Docket No. FE-88-01; Notice 5]

RIN No. 2127-AB75

#### Passenger Automobile Average Fuel Economy Standards, Model Year 1989

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for reconsideration.

**SUMMARY:** On September 30, 1988, NHTSA issued a final rule setting the passenger automobile average fuel economy standard for model year 1989 at 26.5 miles per gallon (mpg). The standard represented an increase of 0.5 mpg over the 1988 level, and a decrease of 1.0 mpg from the statutory level of 27.5 mpg. The Center for Auto Safety and Public Citizen jointly submitted a petition requesting the agency to reconsider its decision to lower the statutory standard. This notice denies the petition.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-0846).

**SUPPLEMENTARY INFORMATION:** Title V of the Motor Vehicle Information and Cost Savings Act specifies a CAFE standard of 27.5 mpg for each model year after 1984. (Title V was added to

that Act by the Energy Policy and Conservation Act.) However, the Act permits NHTSA to amend the statutory standard to a level determined to be the "maximum feasible average fuel economy level." 15 U.S.C. 2002(a)(4). In determining the "maximum feasible average fuel economy level," the agency is required to consider the following four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

NHTSA commenced the rulemaking proceeding regarding the model year (MY) 1989 standard on August 25, 1988 with the issuance of a notice proposing to reduce the standards for MYs 1989-90 from the statutory level of 27.5 mpg to some level from 26.5 mpg to 27.5 mpg (53 FR 33080, August 29, 1988).

On September 30, 1988, NHTSA issued a final rule (53 FR 39275, October 6, 1988) setting the MY 1989 corporate average fuel economy (CAFE) standard for passenger cars at 26.5 mpg. While this level represented a lowering of the statutory standard, it also represented a first step in returning to the statutory level of 27.5 mpg. NHTSA noted that its raising of the standard from the MY 1986-88 level of 26.0 mpg was thus consistent with the fact that the nation's conservation needs were greater then than they had been in 1985, when the agency first set the standard at 26.0 mpg.

On November 7, 1988, the Center for Auto Safety (CFAS) and Public Citizen (PC) jointly submitted a petition requesting the agency to reconsider its decision to lower the statutory standard. The petitioners alleged that NHTSA erred in reducing the standard for a number of reasons, including "(1) erroneously finding that Congress' energy conservation goals have been met, (2) finding General Motors' maximum feasible fuel economy as 26.5 mpg when it is at least 27.5 mpg, (3) falsifying (sic) blaming General Motors' declining sales on CAFE standards, (4) misconstruing the Energy Policy and Conservation Act (EPCA) and its requirement that manufacturers split their fleet into domestic and foreign, and (5) erroneously finding CAFE standards will result in foreign companies selling more large cars."

The petitioners' arguments regarding the reduction of the MY 1989 standard are addressed below.

The agency notes that in MY 1990 the standard will return to the statutory level of 27.5 mpg. See NHTSA's notice terminating its rulemaking regarding the proposed reduction of the MY 1990 standard (54 FR 21985, May 22, 1989).